

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

STEPHEN D. CAIAZZO,

Plaintiff,

v.

THE MEDALLION INSURANCE
AGENCIES, INC.,

Defendant

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) CIVIL ACTION NO.
) 04-12627 RCL
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**DEFENDANT, THE MEDALLION INSURANCE AGENCIES, INC.'S, OPPOSITION TO
PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT AND CROSS-MOTION
FOR COSTS AND FEES**

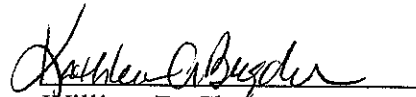
The Defendant, The Medallion Insurance Agencies, Inc., ("Medallion") hereby requests the Court to deny the Plaintiff's Motion for Relief from Judgment on the following grounds: Plaintiff seeks relief from the judgment based upon Medallion's Motion to Dismiss and Rule 11 arguments contained therein. As the record shows, Judge Lindsay did not rule on Medallion's Motion to Dismiss and did not dismiss the case based upon the Motion to Dismiss Rule 11 arguments. The Court specifically stated on the record that it was *sua sponte* granting summary judgment for Medallion based on Plaintiff counsel's inability to articulate proof of a *prima facie* case at trial. Medallion's Motion to Dismiss was specifically not the basis of the dismissal of the case. While Medallion stridently disagrees with the spurious arguments set forth in Plaintiff's recently filed Motion for Relief from Judgment, in the interest of judicial economy Medallion will limit this opposition to the actual grounds for the Court's *sua sponte* granting of summary judgment and reasons why Plaintiff is not entitled to relief from this judgment. Plaintiff was unable at the day of trial to produce the required evidence on the *prima facie* elements of duty,

breach, proximate causation, and damages on the one remaining negligence count against Medallion. Now, eight months later, Plaintiff's counsel is attempting to offer an alternative (and equally ineffective) theory of prosecuting his case. Such an attempt is untimely and does not constitute grounds for relief from judgment pursuant to Rule 60(b)(1), (2), (3) and (6) of the Federal Rules of Civil Procedure. Additionally, Medallion asks this Court to award it attorney's fees expended in drafting and filing this Opposition to Plaintiff's inflammatory, wasteful and ungrounded Motion for Relief from Judgment.

In further support thereof, Medallion references the attached memorandum.

MEDALLION INSURANCE AGENCIES,
INC.

By its attorneys,



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CERTIFICATE OF SERVICE

I, Kathleen A. Bugden, hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants.

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/s/ Kathleen A. Bugden
Kathleen A. Bugden

Date: November 9, 2007